

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
Toll Free Service Access Codes ) CC Docket No. 95-155

**OPPOSITION**

Sprint Communications Company, L.P. hereby respectfully submits its opposition to Petitions for Reconsideration of the Commission's *Fourth Report and Order* (released March 31, 1998, FCC 98-48) in the above-captioned proceeding filed by MCI, the Office of Advocacy of the United States Small Business Administration ("Advocacy"), the Toll Free Users' Coalition ("Coalition"), and the Direct Marketing Association ("DMA"). The Commission should let stand its decision to allow all numbers in the 877 and subsequent toll free service access codes (SACs) to be assigned on a first-come, first-served basis. As discussed below, petitioners have raised no new arguments to support their recommendation that toll free vanity numbers be allocated pursuant to a right of first refusal. Their arguments have already been considered and rejected by the Commission and their petitions should accordingly be denied.

The petitioners offer the following policy arguments in support of their recommendation that toll free vanity numbers be assigned based on right of first refusal rather than first-come, first-served:

- assignment based on first-come, first-served will lead to greater customer confusion than assignment based on a right of first refusal (MCI, p. 6; Coalition, p. 3);
- assignment based on first-come, first-served discriminates against existing holders of vanity numbers and jeopardizes previous investment in toll free numbers (MCI, pp. 1-2; Coalition, p. 2; DMA, p. 1);

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- allowing toll free numbers to be reserved on a first-come, first-served basis offers an unfair advantage to RespOrgs which have direct access to the SMS database and does not prevent RespOrgs from discriminating against less-favored customers (DMA, p. 4; Advocacy, p. 2);
- assigning vanity numbers under a system of right of first refusal will not have a significant effect on code exhaustion (MCI, p. 8; Coalition, p. 5; DMA, p. 9);
- allowing a right of first refusal for vanity numbers in the 888 SAC, but not in subsequently opened toll free SACs, is “arbitrary” (MCI, p. 1; Coalition, p. 2).

With the exception of the last point, each of these arguments has been made in earlier phases of this proceeding. As is clear from both the *Fourth Report and Order* and previous orders in this proceeding, the Commission has in fact given due consideration to these arguments and has nonetheless decided against a policy of right of first refusal for vanity numbers in the 877 and subsequent toll free SACs.

**Customer confusion:** In addressing concerns about customer confusion which might arise if different subscribers were assigned the same 7-digit number in different SACs, the Commission correctly pointed out (*Fourth Report and Order*, para. 29) that as additional toll free SACs are introduced, the public will become increasingly aware of the fact that toll free access is provided under multiple area codes, and that a seven digit number in one toll free SAC does not necessarily terminate at the same location as the same seven digit number in another toll free SAC. Thus, customer confusion should continue to abate and the volume of misdialed calls should decrease as the public becomes increasingly familiar with the use of multiple toll free SACs.<sup>1</sup>

The Coalition takes the customer confusion concern a step further, arguing (p. 3) that “[e]ven if the Commission is correct that consumer confusion will decrease with the introduction

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<sup>1</sup> *Second Report and Order*, 12 FCC Rcd 11162, 11209 (para. 72) (1997).

of the 877 code, *decreased* confusion is not the same as *no* confusion” (emphasis in original). Sprint is certainly sympathetic to the inconvenience and expense associated with end user misdials resulting from customer confusion. However, it is impossible to devise a toll free number assignment policy that will prevent all customer confusion -- there will always be some callers who do not take careful note of the SAC and consequently dial the wrong number.<sup>2</sup> The benefits of toll free service are not maximized by implementing a policy which attempts to eliminate all customer confusion by assigning a limited public resource to subscribers who want the same 7-digit number in subsequent toll free SACs in order to capture misdialed calls or to better protect themselves against fraud, rather than for active and productive use.<sup>3</sup>

**Harm to existing subscribers:** The Commission has also considered the claim that first-come, first-served toll free number allocation discriminates against existing holders of vanity numbers and jeopardizes investment by those subscribers in their vanity numbers. It noted that protection is afforded under trademark protection and unfair competition laws (*Fourth Report and Order*, para. 22), and that public awareness campaigns will help educate callers of the need to dial a particular SAC in order to reach the desired party (*id.*, para. 27). Furthermore, strict enforcement of rules prohibiting hoarding and brokering should help to prevent incumbent vanity and branded number subscribers from potential abuse of those 7-digit numbers in other SACs.

Advocacy also makes a procedural criticism of the *Fourth Report and Order*, asserting (p. 14) that “[i]n its haste to release the *Fourth Report and Order* prior to the designated roll out date for the 877 code[,] the Commission neglected to fulfill its statutory obligation to analyze

<sup>2</sup>Indeed, the Coalition acknowledges (p. 4) that there will always be misdials due to inattention and touch-pad error on the part of callers.

<sup>3</sup> *Fourth Report and Order*, para. 17.

fully the impact of its rules on small businesses before it reached a final decision.” While it is likely true that the Commission made every attempt to release the order prior to implementation of the 877 SAC, it is hardly the case that the Commission had insufficient time or an incomplete record on which to consider the merits of a policy of right of first refusal versus a first-come, first-served policy. The issue of appropriate treatment of toll free vanity numbers has been before the Commission since October 5, 1995, when it released the *Notice of Proposed Rule-making* in this docket, and was briefed exhaustively in two rounds of public comments and replies.<sup>4</sup> As evidenced by its decision to allow subscribers of 800 vanity numbers the right of first refusal for those numbers in the 888 SAC, the Commission has in fact taken into careful consideration the impact of its decision on small business (and other) existing toll free service subscribers (see also, *Fourth Report and Order*, Appendix B, paras. 30-31).

**Access to the SMS database:** In their petitions, Advocacy and DMA assert that assigning numbers on the basis of first-come, first-served is “not truly first-come, first-served due to difficulties that a substantial number of small RespOrgs have in accessing the database [used to reserve toll free numbers] and the conflict of interest inherent in the structure of toll free carriers and their RespOrgs affiliates/subsidiaries” (Advocacy, p. 2, footnotes omitted). The argument that large RespOrgs with direct (as opposed to dial-up) access to the SMS database have an unfair advantage in securing toll free numbers has been made many times, and here again, the Commission has previously addressed this issue. In its *Report and Order* in this proceeding, the Commission correctly stated that use of MGI, a generally available, tariffed service that offers automated access to the SMS database, “is an individual business decision made on the part of each

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<sup>4</sup> On July 2, 1997, the Commission requested that parties refresh the record as regards treatment of toll free vanity numbers.

RespOrg.”<sup>5</sup> It makes no sense to penalize entities which have decided to invest in a system such as MGI which enables them to process orders efficiently. And, to the extent that a RespOrg/carrier is allegedly abusing the process for securing toll free numbers -- and it is hardly a conflict of interest for a RespOrg to further its financial goals by securing toll free numbers for its service subscribers -- the aggrieved party can file a complaint against the RespOrg which allegedly acted improperly.

**Right of first refusal does not contribute to code exhaust:** Three of the petitioners argue that assigning vanity numbers on the basis of right of first refusal will not contribute significantly to premature code exhaust. Based on the experience with the 888 SAC, in which approximately 375,000 numbers were set aside (*Fourth Report and Order* at para. 21), petitioners conclude that only 5% of available toll free numbers in any toll free SAC will be replicated. However, as more entities subscribe to toll free numbers, the percentage of numbers deemed commercially valuable may also increase.<sup>6</sup> Thus, the Commission was correct in its assertion (*Fourth Report and Order*, para. 17) that “the likelihood of more rapid depletion would increase as additional toll free codes are made available because it is likely that a growing percentage of numbers in each code would be taken by subscribers exercising their right of first refusal.”

**Precedence requires right of first refusal in all SACs:** MCI and the Coalition argue that vanity numbers should be assigned on the basis of right of first refusal in the 877 and subsequent toll free SACs because such an assignment basis was used in the 888 SAC. This argument

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<sup>5</sup> 11 FCC Rcd 2496, 2501 (para. 22) (1996).

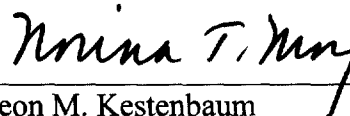
<sup>6</sup> For example, while the subscriber of 800 123-4567 may not consider the number commercially valuable and thus not reserve that number in the 888 SAC, the subscriber of 888 123-4567 may consider it commercially valuable and therefore wish to replicate that number in the 877 SAC.

overlooks the unique circumstances surrounding introduction of the 888 SAC: it was the first new toll free SAC to be implemented since the introduction of 800 service, and it was unclear at the time 888 was implemented how callers and subscribers of toll free vanity numbers would react to the new SAC. Based on these circumstances, and out of an abundance of caution, allowing replication of 800 vanity numbers in the 888 SAC was not an unreasonable policy. However, now that callers and subscribers have experience with multiple toll free SACs, assignment on a first-come, first-served basis can and should be used because such a system, as the Commission correctly found, best ensures the "orderly, efficient, and fair" allocation of toll free numbers.

Because petitioners have failed to raise any new arguments demonstrating that an allocation system based on a right of first refusal best serves the public interest, the Commission should deny the petitions for reconsideration and reaffirm that all numbers in the 877 and subsequent toll free SACs should be assigned on a first-come, first-served basis.

Respectfully submitted,

SPRINT COMMUNICATIONS COMPANY, L.P.

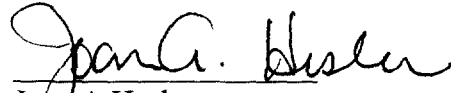


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June 3, 1998

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **COMMENTS OF SPRINT COMMUNICATIONS CO. L.P.** was Hand Delivered or sent by United States first-class mail, postage prepaid, on this the 3<sup>rd</sup> day of June, 1998 to the below-listed parties:

  
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